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By EFS

In Re Application of: Keith James Hensel
US Application Number: 10/562,025
Filing Date: 22 December 2005
Title: Juicer
Group Art Unit:
Examiner:
Attorney Docket No: BRE0308U

CONSIDERED: /SP/

9 May 2011

05/17/2011

Dear Sirs,

Response After Final Rejection

The Applicant is in receipt of the final rejection mailed on 12 April 2011. The purpose of this reply is to demonstrate that the Examiner's rejection is well outside of the well established law as it is known from the United States Supreme Court case of KSR International Co. v Teleflex, Inc., 550 US 398 (2007).

The Examiner is urged to recognize that KSR did not radically alter the law of obviousness so much as reverse the federal Circuit's prior practice of requiring an explicit motive, teaching or suggestion. For the Examiner to succeed with his arguments, it is required that the Examiner demonstrate either a known problem or an implied motivation (in the

prior art) for which there was an obvious solution encompassed by the present claims. The Examiner has shown only speculation.

As outlined in the Declaration of Richard Hoare, the Applicant became aware of the problem of the graded or cracked tubes by virtue of its particular and private investigation of the affect of detergents on commercial units. The problem was not a well a known problem and the Examiner has produced no evidence that the problem was well known. Accordingly, there could have been no actual or implied motivation without knowledge of this problem (outside of the Applicant's business).

The Examiner's approach has been (although factually quite misguided) to show how different references could be combined to achieve the claimed structure. However, whether or not the references can be combined or how they can be combined is of absolutely no importance without a pre-existing motive, teaching or suggestion to show the obviousness of the combination. The question before the Examiner is not whether or not the references can be combined but whether or not it would have been obvious to combine the references. How could the question of obviousness possibly be considered or determined without some notion of motive, teaching or suggestion (explicit or implicit) in the prior art?

The Examiner also contends, quite erroneously, that Rackof shows it is well known to provide a gasket having a neck and a surrounding ring to receive a plurality of fasteners. No patent is, on its face, capable of demonstrating that a particular fact is well known. What is does show is that a particular technology is published. That is not a substitute for the Examiner's contention that the feature was "well known". In fact, the Examiner's leap to find certain facts "well known" might be seen as a bias toward rejection.

As such, the Examiner's rejection amounts to an incomplete proof of a conclusion that it would have been impossible to make without having had the benefit of the Applicant's specification. There is not a scrap of evidence in any of the references, either implied or explicit that a juicer could be constructed to have the benefits or structure that are now the subject of Claim 1.

As further explained in the Declaration of Richard Hoare, fractures or degradation in feed tubes are more prevalent in a commercial setting where a large amounts of fruit and vegetable matter are introduced into a feed tube. Because most commercial units conventionally have metal feed tubes, the problems associated with plastic feed tubes in commercial environments were only known to very few people. There is no evidence that this kind of knowledge existed outside of the Applicant's business.

Accordingly, the Examiner is strongly urged to ignore the roll of hindsight in this Examination and to provide the Applicant with some indication and analysis, in writing, of the facts surrounding any motive, teaching or suggestion, express or implied, that could be gleaned from the prior art before the present invention was made. In the absence of such a showing, the Examiner is required to allow the claims.

Favorable re-consideration is requested.

Please charge any deficiency in the fees due to our Deposit Account No. 503458 in the name of Molins & Co.

Regards,

A handwritten signature in dark ink, appearing to read "Michael Molins". The script is cursive and somewhat stylized, with the first name being more prominent.

Michael Molins
Reg. No. 31785
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